

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

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4 In the Matter of)

5) MUR 5101

6 Rabbi Yaakov Bender, *et al.*)

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10 **GENERAL COUNSEL'S REPORT #2**

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13 **I. ACTIONS RECOMMENDED**

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16 2. Take no further action and close the file as to seventeen respondents.

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18 **II. INTRODUCTION**

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20 This matter involves the reimbursement of fourteen contributors who each contributed
21 \$1,000 to Roger Kahn's 2000 campaign committee. Rabbi Bender, the dean of Yeshiva Darchei
22 Torah ("Yeshiva"), an incorporated nonprofit private academy, admitted that he used money
23 from the Rabbi's Fund, a special Yeshiva account, to reimburse himself and thirteen of his
24 employees for their contributions.¹ See First General Counsel's Report (Attachment 2 at 9).

25 In its complaint, the National Republican Congressional Committee ("NRCC") alleged
26 that Meyer Berman, a "generous" contributor to the Yeshiva and a "good friend" of Roger Kahn,
27 "funneled" his personal funds through the Yeshiva's employees to make the prohibited
28 contributions to Kahn's campaign. Complaint at 1-2. While it is true that Berman asked Rabbi
29 Bender to solicit contributions for the Kahn Committee, we found no evidence that Berman was

¹ The Rabbi's Fund is a special Yeshiva account Rabbi Bender uses, at his discretion, to support charitable and community causes. See First General Counsel's Report (Attachment 2 at 10).

1 involved in the reimbursements. In fact, none of the Yeshiva employees we interviewed had any
2 contact with Berman regarding their contributions.

3 **III. DISCUSSION**

4 During the course of this investigation, we interviewed Rabbi Bender and five of the
5 Yeshiva employees who were reimbursed for their campaign contributions to the Kahn
6 Committee. We also interviewed Berman and his secretary, In addition, we
7 reviewed documents produced by Rabbi Bender, the Yeshiva, the Yeshiva employees, Berman,
8 and the Kahn Committee.

9 Rabbi Bender and Berman have known each other for fifty years. Attachment 1 at 3.
10 Berman, the founder and president of M.A. Berman Co., a securities broker-dealer, has donated a
11 significant amount of money to the Yeshiva. According to Rabbi Bender, "Berman was not a
12 regular donor but when he did it was big." *Id.* at 3. Between 1991 and 2000, Berman donated a
13 total of \$175,000 to the Yeshiva, including \$21,000 to the Rabbi's Fund. *Id.* at 3-4.

14 The initial focus of our investigation was whether Berman's donations to the Yeshiva
15 were used to reimburse Rabbi Bender and the Yeshiva employees for their campaign
16 contributions. The evidence we collected, however, does not sustain that theory. Two of
17 Berman's donations to the Rabbi's Fund (totaling \$11,000) were made in 1998, more than a year
18 before the campaign contributions in question. *Id.* at 4. Rabbi Bender explained that those
19 donations were used to help two of his nephews *Id.* Berman's
20 other donation to the Rabbi's Fund (\$10,000) was made in April 2000, four months after the
21 reimbursements. According to Rabbi Bender, that donation was used to help his nephews as
22 well. *Id.*; Attachment 2.

23 - 04 - 406 - 3404

1 Nor does it appear that Berman's other donations to the Yeshiva were used to reimburse
2 Rabbi Bender and the Yeshiva employees for their Kahn Committee contributions. Several years
3 ago, Berman made a donation pledge of \$360,000 to support the Yeshiva's vocational center,
4 which is named after his parents. Attachment 1 at 4. Berman's donations to the Yeshiva's
5 general fund during 2000 (totaling \$104,000) were in connection with his pledge. *Id.*;
6 Attachment 3.

7 The other theory we investigated was whether Berman assisted Rabbi Bender in making
8 the reimbursements by suggesting that he reimburse the Yeshiva employees from the Rabbi's
9 Fund. Rabbi Bender told us that using the Rabbi's Fund was his idea. Attachment 1 at 10. The
10 five Yeshiva employees we queried had no information regarding Berman's alleged involvement
11 in the reimbursement of their contributions to the Kahn Committee. According to Berman,
12 Rabbi Bender did not tell him whom he planned to solicit for contributions to the Kahn
13 Committee. Berman further stated that if he had known that Rabbi Bender was going to solicit
14 Yeshiva employees, "I would have killed him." Attachment 4 at 6. Berman knew that Yeshiva
15 employees do not make much money, which is why he expected that Rabbi Bender would
16 approach the "millionaires" who regularly donate large sums to the Yeshiva. *Id.* Rabbi Bender
17 could not recall why he didn't approach the Yeshiva's wealthy donors for the Kahn Committee
18 contributions. Attachment 1 at 2.

19 Berman not only claims that he did not know the contributions came from the Yeshiva
20 employees, he told us he never saw the contribution checks. *Id.* at 7. Apparently, although
21 Rabbi Bender sent the checks to Berman (Attachment 1 at 2), Berman's secretary,

5045-904-40-22

1 forwarded the checks to the Kahn Committee without telling Berman that she received
2 them. Attachment 5 at 2.

3 Consequently, based on the evidence collected, we are unable to establish that Berman
4 played a role in the reimbursement of the Yeshiva employees.

5 **IV. RECOMMENDED DISPOSITIONS**

19 **C. Yeshiva Employees**

20 All of the Yeshiva employees we interviewed acknowledged that Rabbi Bender asked
21 them to contribute \$1,000 to Kahn Committee and then reimbursed them for their contributions.
22 Consequently, the Yeshiva employees violated section 441f because they knew they were being

23-04-406-3406

1 reimbursed for their campaign contributions. We recommend, however, that the Commission
2 take no further action and close the file as to those individuals.² This Office further recommends
3 that admonishment letters be sent to each of the Yeshiva employees who contributed to the Kahn
4 Committee and were reimbursed for their contribution.³

5 **D. Russell Rothman**

6 Russell Rothman, who contributed \$1,000 to the Kahn Committee, was identified in the
7 Kahn Committee's 1999 year-end disclosure report as a Yeshiva employee. Our investigation,
8 however, revealed that Rothman was not employed by or in any way connected to the Yeshiva.

9 Rothman is a senior executive and owner of M. Rothman & Co. Attachment 6 at 4. In or
10 about November 1999, Rothman received a solicitation from either a local or national
11 Democratic organization (he could not recall the name of the organization) identifying a few
12 congressional races that were "critical contests, from a social, philosophical and political point of
13 view." *Id.* at 1. Rothman responded to the solicitation by contributing to several candidates,
14 including Roger Kahn. *Id.*

15 Rabbi Bender's response to the complaint included a list of Yeshiva employees who were
16 reimbursed for their campaign contributions to the Kahn Committee. Rothman was included in
17 that list. Based on Rabbi Bender's response, we recommended in the First General Counsel's
18 Report that the Commission find reason to believe that Rothman violated section 441f.
19 Rothman, in response to the Commission's Factual and Legal Analysis, submitted two sworn

² In the First General Counsel's Report, we informed the Commission that we expected to recommend taking no further action with respect to the Yeshiva employees if they cooperated with the investigation, which they have.

³ Three of the Respondents, Shoshana Strickman, Scott Marchuck, and Aron Rosenberg, claimed they did not sign the contribution checks. Upon further investigation it was determined that their spouses (Stewart Strickman, Deborah Marchuck, and Miriam Rosenberg) signed the checks and, as such, were the actual contributors. Our recommendation regarding the admonishment letters would include these three spouses.

23-04-406-3407

1 affidavits in which he stated, *inter alia*, he has never met or spoken to Rabbi Bender or Berman.
2 *Id.* at 2, 4. Rothman also stated that he was not reimbursed by anyone for his contribution to the
3 Kahn Committee. *Id.* at 2.

4 We asked both Rabbi Bender and Berman about Rothman. Rabbi Bender stated that he
5 never heard of Rothman.⁴ Attachment 1 at 3. Berman also claimed he never heard of Rothman.
6 Attachment 4 at 8. Although Rothman's name and contribution were on a list prepared by
7 Berman's secretary of the Kahn Committee contributions that were sent to Berman's office and
8 forwarded to the Kahn Committee (*see* Attachment 7 at 3), Berman's secretary did not have any
9 information regarding Rothman. Finally, we asked the Kahn Committee for an explanation, but
10 they were unable to provide one. Consequently, we were unable to firmly establish why the
11 Kahn Committee identified Rothman as a Yeshiva employee.⁵

12 Based on the evidence obtained in our investigation, we recommend that the Commission
13 take no further action and close the file as to Rothman as we now know he was not reimbursed
14 for his campaign contribution to the Kahn Committee.

15 **E. Daniel Farash and Ronald Lowinger**

16 In the First General Counsel's Report, we informed the Commission that we were not
17 recommending reason to believe findings as to Daniel Farash or Ronald Lowinger because there
18 was nothing to suggest that they were reimbursed for their contributions to the Kahn Committee.
19 We further stated that if we uncovered information during the investigation that proved

⁴ Rabbi Bender's attorney informed us that he mistakenly included Rothman in Rabbi Bender's list because Rothman was identified as a Yeshiva employee in the Kahn Committee's disclosure report.

⁵ The Kahn Committee will be instructed to file an amended report to reflect Rothman and Farash's correct employers.

1 otherwise, we would make the appropriate recommendations. First General Counsel's Report at
2 14 n.9.

3 Daniel Farash made six contributions to federal candidates during the 2000 election cycle,
4 one of which was a \$500 contribution to the Kahn Committee on December 31, 1999. The Kahn
5 Committee identified Farash as a Yeshiva employee in its 1999 year-end report. The other
6 campaign committees identified Farash's employer as All Service Computer Rental. We
7 contacted Farash to find out if he was a Yeshiva employee and, if not, why he was identified as
8 such in the Kahn Committee's disclosure report. According to Farash, he has never been
9 employed by the Yeshiva, and he does not know how or why the Kahn Committee listed his
10 employer as the Yeshiva. Attachment 8. Moreover, neither Rabbi Bender nor Berman claimed
11 to know Farash.⁶ Attachment 1 at 3; Attachment 4 at 8.

12 Ronald Lowinger, a member of the Yeshiva's Board of Directors, contributed \$1,000 to
13 the Kahn Committee at Rabbi Bender's request. Rabbi Bender, however, did not reimburse
14 Lowinger. According to Rabbi Bender, he did not offer to reimburse Lowinger because
15 Lowinger would have been "insulted." Attachment 1 at 10.

16 As discussed above, we did not uncover any evidence that Farash or Lowinger were
17 reimbursed for their contributions and, therefore, do not recommend that the Commission
18 generate Farash or Lowinger as additional respondents in this matter.

19 **F. Meyer Berman**

20 This Office recommends that the Commission take no further action and close the file as
21 to Berman. As discussed above, we have not uncovered evidence that Berman funneled money

⁶ Farash was also on the list of Kahn Committee contributors prepared by Berman's secretary. Attachment 7 at 3. Berman's secretary, however, had no specific information regarding Farash.

23 "04" 406 3499

1 to Rabbi Bender and his employees to reimburse them for their contributions. Nor have we
2 uncovered any evidence that Berman advised Rabbi Bender to use Yeshiva funds to reimburse
3 himself and the employees who contributed to the Kahn Committee.

4 The NRCC also alleged that Berman violated 2 U.S.C. § 441a(a)(3). *See* Complaint at 3.
5 The Commission found reason to believe that Berman violated section 441a(a)(3) based on the
6 total amount of campaign contributions (\$91,250) he made during the 1998 and 2000 election
7 cycles. Applying Berman's contributions to the year in which the election occurred, pursuant to
8 section 441a(a)(3), we conclude that he did not exceed the \$25,000 calendar year limitation
9 during the 1998 and 2000 election cycles. *See* Attachment 9.

10 **G. The Kahn Committee**

11 In the First General Counsel's Report, we did not recommend reason to believe findings
12 against the Kahn Committee or Kahn because the record did not contain any information that
13 they knew, upon receipt, that the contributions were improper. We did, however, note that the
14 Kahn Committee might not have refunded all of the reimbursed contributions. First General
15 Counsel's Report at 8 n.6. As such, we stated that we intended to recommend sending a letter to
16 the Kahn Committee requiring it to disgorge the balance of the impermissible contributions. We
17 have since determined that such a letter is not necessary as the Kahn Committee refunded all of
18 the reimbursed contributions.⁷

19 In the First General Counsel's Report, at 14-15, we also discussed the possibility that the
20 Kahn Committee might have knowingly accepted the impermissible contributions because it

⁷ Based on our review of the Kahn Committee's filings, we concluded that all of the reimbursed contributions were refunded. On September 29, 2000, the Kahn Committee refunded thirteen of the fourteen reimbursed contributions. On December 20, 2000, the Kahn Committee notified the Commission that Aron Rosenberg's contribution check was returned to the Committee for insufficient funds. Thus, all fourteen contributions have been accounted for.

23-04-406-3410

1 appeared that the reimbursed contributions were refunded more than thirty days after the *Atlanta*
2 *Jewish Times* article was published. See 11 C.F.R. § 103.3(b)(2). Because that article provided
3 sufficient basis for the Kahn Committee to question the lawfulness of the Yeshiva employees'
4 contributions (see Attachment 3 of the First General Counsel's Report), the Kahn Committee was
5 required to use its best efforts to determine the legality of the contributions. See Advisory
6 Opinion 1995-19.⁸

7 The Kahn Committee claims that its decision to refund the Yeshiva employee
8 contributions was made for political reasons, and was not based on information that the
9 contributions were illegal (see First General Counsel's Report, Attachment 5 at 2). Had the Kahn
10 Committee undertaken an inquiry into the legality of the Yeshiva employees' contributions,
11 undoubtedly it would have taken longer than thirty-five days to determine that Rabbi Bender
12 reimbursed the Yeshiva employees from the Rabbi's Fund. Nonetheless, the Kahn Committee
13 refunded the contributions thirty-five days after the *Atlanta Jewish Times* article was published,
14 only five days late assuming the article was sufficient to trigger a refund. Accordingly, this
15 Office recommends that the Commission take no further action and close the file as to the
16 Committee and Kahn.

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⁸ In Advisory Opinion 1995-19, the newspaper article in question contained specific assertions by contributors that they were reimbursed for their contributions. In addition, the reporter met with the committee's treasurer and provided specific and serious allegations of reimbursement. Based on those facts, the Commission concluded that there was a sufficient basis for the committee's treasurer to question the legality of some of the contributions and to take steps to determine the legality of those contributions.

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VI. RECOMMENDATIONS

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3. **Take no further action and close the file as to Rita Abrams, Shimon Dachs, Esther Bald, Lynne Gordon, Judah Harbater, Phyllis Lipshitz, Scott Marchuck, Pearl Neufeld, David Presser, Aron Rosenberg, Russell Rothman, Shoshana Strickman, Zelda Volk, Libby Yavne, Meyer Berman, Roger Kahn, and Friends of Roger Kahn, Inc. and G. Scott Rafshoon, as treasurer.**
4. **Send admonishment letters to Stewart Strickman, Deborah Marchuck, Miriam Rosenberg, Rita Abrams, Shimon Dachs, Esther Bald, Lynne Gordon, Judah Harbater, Phyllis Lipshitz, Pearl Neufeld, David Presser, Zelda Volk, and Libby Yavne.**

5. Approve the appropriate letters.

Lawrence H. Norton
General Counsel

2/3/03
Date

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